IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

OP.No. 25915 of 2002(I)

PETITIONERS:
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1. S.V. DAVID, S/O. VARGHESE,
SANKOORIKAL HOUSE, CONVENT JUNCTION,
MARKET ROAD, ERNAKULAM.

2. MARY AGNES, W/O. DAVID OF DO. DO.

3. DIVYA DAVID, D/O. DAVID OF DO. DO.

4. VIDYA DAVID, D/O. DAVID OF DO. DO.

5. RAMYA DAVID, D/O. DAVID OF DO. DO.

BY ADV. SRI.A.ANTONY

RESPONDENTS:
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1. THE TAHSILDAR, KANAYANNUR TALUK,
ERNAKULAM.

2. THE REVENUE DIVISIONAL OFFICER,
FORT KOCHI.

3. THE DISTRICT COLLECTOR, ERNAKULAM.

BY GOVERNMENT PLEADER, SRI.MATHEW JOSEPH VADAKKEL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP NO.25915/2002/I

ORDER ON C.M.P. NO.44115/2002 IN O.P. NO.25915/2002

DISMISSED

SD/-

16.8.2007. T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE FAMILY SETTLEMENT AGREEMENT DATED 27-1-1986 EXECUTED BY THE PETITIONERS.

EXT. P2: COPY OF THE RETURN DATED 18-3-2001 SUBMITTED BY 1ST PETITIONER BEFORE 1ST RESPONDENT.

EXT. P3: COPY OF THE RETURN DATED 18-3-2001 SUBMITTED BY 2ND PETITIONER BEFORE 1ST RESPONDENT.

EXT. P4: COPY OF THE RETURN DATED 18-3-2001 SUBMITTED BY 3RD PETITIONER BEFORE THE 1ST RESPONDENT.

EXT. P5: COPY OF THE RETURN DATED 18-3-2001 SUBMITTED BY 4TH PETITIONER BEFORE THE 1ST RESPONDENT.

EXT. P6: COPY OF THE RETURN DATED 18-3-2001 SUBMITTED BY 5TH PETITIONER BEFORE THE 1ST RESPONDENT.

EXT. P7: COPY OF THE ORDER BEARING NO.B1-4577/01 DATED 5-12-2001 OF THE 1ST RESPONDENT.

EXT. P8: COPY OF THE DEMAND NOTICE BEARING NO.B1-4577/01 DATED 5-12-2001 OF THE 1ST RESPONDENT.

EXT. P9: COPY OF THE RECEIPT BEARING NO.1387/054 DATED 27-12-2001 OF THE VILLAGE OFFICER, ELAMKULAM VILLAGE.

EXT. P10: COPY OF THE RECEIPT BEARING NO.6167/049 DATED 29-5-2002 OF THE VILLAGE OFFICER, ELAMKULAM VILLAGE.

EXT. P11: COPY OF THE MEMORANDUM OF APPEAL DATED 2-1-2002 SUBMITTED BY THE PETITIONERS BEFORE 2ND RESPONDENT.

EXT. P12: COPY OF THE ORDER BEARING NO.K.DIS.118/02-G DATED 19-4-2002 OF THE 2ND RESPONDENT.

EXT. P13: COPY OF THE REVISION PETITION DATED 29-5-2002 SUBMITTED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT.

EXT. P14: COPY OF THE ORDER BEARING NO.K.DIS.22572/02/B10 DATED 31-7-2002.

/TRUE COPY/

P.A. TO JUDGE

JP

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 25915 of 2002-I.

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Dated this the 16th day of August, 2007.

J U D G M E N T

The petitioners are challenging the orders passed by the assessing authority, confirmed in appeal by the appellate authority as well as by the revisional authority under the Kerala Building Tax Act. The petitioners five in number have constructed six residential apartments in pursuance of a family settlement. The 2nd petitioner is the wife of the 1st petitioner and petitioners 3 to 5 are their daughters. The family settlement agreement is evident from Ext.P1. The said agreement was in respect of construction of six residential apartments in their respective names in a three storied building covered by it. According to the petitioners, there are stipulations therein as to how the funds for the construction of the building have to be contributed, construction to be made, regarding the undivided share in the said property etc. It is also stated that the building permit and the approval of plan were obtained pursuant to the said agreement.

2. The learned counsel for the petitioners submitted that the assessing authority, the appellate authority and the revisional authority have

not considered the real issue arising in this case. Before the assessing authority he was not allowed sufficient opportunity to produce materials and documents in support of his claim. According to the learned counsel for the petitioners, the petitioners have evidence to be adduced to show how the funds were utilised as far as the construction is concerned and if a further opportunity is given they can substantiate their claim before the authority concerned. The learned Government Pleader points out that the orders will show that what was produced was only the agreement and no other evidence.

3. The learned counsel for the petitioners also submitted that the agreement does not require any registration in the light of the various decisions of the Supreme Court. In view of the above position petitioners have to be given a further opportunity to adduce evidence before the appellate authority. Therefore, the appellate authority is hereby directed to consider the matter afresh with opportunity of hearing to petitioners. The impugned orders namely, Exts.P12 and P14 will stand quashed. The petitioners can adduce whatever evidence, documentary or oral before the R.D.O., who has to rehear the appeal and pass appropriate orders within a period of three months from the date of receipt of a copy of this judgment. The interim order passed by this Court on 12.9.2002 will continue till the

matter is finally decided and the orders are communicated to the petitioners.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-